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ABSTRACT

Little research has been conducted in an effort to clarify the legal ramifications involved in the support services a guidance department may offer in a typical high school. Of particular interest are the liabilities to which counselors, principals, and other school personnel might be subjected in guidance departments having peer assistance programs. While peer assistance programs are both cost efficient and effective in helping students, the challenge is to create programs in compliance with ethical and legal issues. A more thorough investigation of the legal and ethical issues involving special guidance services is indicated. By becoming more aware of possible legal and ethical difficulties one might encounter in innovative helping programs, precautions and appropriate guidelines can be developed before beginning such endeavors. The results of a survey of 30 Indiana Association of College Admission Counselors verified the need for clarification regarding some of these concerns. Respondents voiced an interest in developing peer assistance programs and a fear of legal ramifications. The four concerns clearly identified by the respondents were confidentiality, peer counselors versus peer helpers or assistants, dependency, and accountability. School boards and state departments of education must provide some leadership by establishing clear and supportive guidelines for peer assistance programs in the schools. (NB)

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Peer Assistance Programs in the Schools: Some Legal and Ethical Issues

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Abstract

Peer assistance programs are cost efficient and demonstrate effective help for students. The challenge is to create programs in compliance with ethical and legal issues.

Peer Assistance Programs in the Schools:
Some Legal and Ethical Issues

Little research has been conducted in an effort to clarify the legal ramifications involved in the support services a guidance department may offer in a typical high school. Of particular interest are the liabilities to which counselors, principals, and other school personnel might be subjected in guidance departments having peer assistance programs. Those special counseling services are set up to help students who face serious emotional, physical, and psychological problems. Drake and Roe (1986) correctly stated that "the school has had thrust upon it more and more responsibility for maintaining our society." (p.3) There is considerable debate regarding whether or not the school is the proper arena where such social ills should be addressed, especially in times when schools are being criticized for lack of efficiency in their primary function--educating our youth.

However, it can reasonably argue that unless such personal concerns facing our youth are addressed properly, learning cannot succeed. Many students' physical and psychological health are in jeopardy; consequently, programs have been developed in response to many adolescent problems such as depression and suicide, alcohol and substance abuse, and eating disorders. Morgan (1985) asserts that there exists "a cultivated illusion concerning help available in our schools for children with special needs." (p. vii) With the increase in federal money for special education since the 1970s, it might appear that large sums of money exist to help students with emotional problems. Yet many students with emotional problems do not fit into any special education category. Since the schools cannot adequately fund needed services for establishing good mental health, it has been suggested that the schools should work in conjunction with mental health centers, churches, civic organizations, parent groups, and interested and caring individuals. The educational system, more than

any other organization, has the advantage of a captive audience, incurring more contact time and influence than any other subculture. The school, then, might appropriately offer such psychological services as peer assistance programs.

However, this effort is often hampered because of concerns about lawsuits, combined with criticism of educators for the lack of improvement in achievement test scores. As a result, many educators may shy away from developing innovative peer assistance programs. Such incidents as a 1989 Munster, Indiana, wrongful death case against a high school involving teen suicide could provide arguments both for and against the establishment of special guidance services such as support groups or peer assistance (Murphy, 1989). Although special guidance services may more readily identify such problems, a peer assistance program with poor training and inadequate monitoring could perpetuate such tragedies.

Therefore, a more thorough investigation of the legal and ethical issues involving special guidance services is indicated. By becoming more aware of possible legal and ethical difficulties one might encounter in innovative helping programs, precautions and appropriate guidelines can be developed before beginning such endeavors. Good preparation, with an understanding of many of the risks involved, is preferable to emergency reaction, usually at a time when people blame each other for the dilemma that faces them. School counselors must become more developmentally oriented - - proactive instead of solely reactive. If proper planning and preventive methods are in place, a willingness to help students and productive risk-taking might be encouraged because many of the legal ramifications can be curtailed, if not eliminated.

The results of a recent survey administered to 30 Indiana Association of College Admission Counselors (IACAC) at Indianapolis, Indiana, verified the need for clarification regarding some of these concerns. These counselors expressed both an

interest in developing or maintaining peer assistance programs and a fear of legal ramifications. Questions such as the following were asked: (1) If you currently have a peer assistance program, what problems have you encountered in the running of your program? (2) What issues or problems did you confront in the establishment of your peer assistance program? (3) If your school does not currently have a peer assistance program and you were to establish such a program, what potential difficulties would you perceive facing your school? (4) If these concerns could be adequately addressed, would your school be willing to offer peer assistance groups? These 30 active counselors expressed an overwhelming concern with legal ramifications related to establishing or maintaining a peer assistance program

Peer Assistance Programs Work

Peer facilitator groups have been used successfully in both elementary and middle schools where students have helped each other through difficult adjustment periods (Bowman, 1986). Properly selected middle school students with good training have been successful as tutors, as special friends who can offer a kind word and a caring ear, as group leaders in classroom discussions regarding curriculum, and in dealing with personal issues.

At Mt. Diablo High School in Antioch, California (Faconti & Hagerstrand, 1987), a conflict management program implemented with teens helping teens reduced conflicts and the number of school suspensions. Using trained student facilitators to help resolve conflicts between individual students and student groups, administrators of the program sought to teach the students how to communicate more effectively with one another by implementing rational decision-making skills to ease tension between individuals and groups.

Randallstown High School in Baltimore County, Maryland, provides an excellent example of peer assistance bringing about a more positive school environment (Lynn,

1986). The peer helping program at that school involved students in peer tutoring, in peer assistance as effective and empathic listeners, and in the articulation and registration of new students.

The training of people to help others who are suffering from physical, emotional, and psychological problems is beginning a new era. We can no longer afford to feel comfortable as professional counselors in helping others in individual sessions, even though the results can be worthwhile. With increasing demands for administrative functions, many school counselors have devised strategies to allow for more personal counseling through effective planning and efficient organization. Even with such strategies, helping all those who need assistance may be overwhelming at times. Peer assistance programs are devices to reach more students in need.

Besides using peer assistance programs as a method to supplement and reach more students, Strain (1981) suggests that children might be used as effective agents for behavior changes of their peers via various strategies including modeling, social reinforcement, and tutoring. In other words, there are probably instances where students helping students are more effective than adults assisting younger people (Reissman, 1990; Tindall & Gray, 1989). The adult is often seen as an authority figure, or perhaps the adult does not understand the experiences the youth is confronting. In successful peer assistance programs, the emphasis is on teaching individuals how to solve their own problems, to be empathetic and caring listeners, and to make referrals to appropriate professionals.

Considering the potential for effective change to occur from students helping students, it must be asked why more schools are not using such techniques to help them in their efforts in working with students' problems. Unfortunately, ethical and legal issues involved with support groups and peer counseling programs are often obstacles which prevent their use. It is hoped that through the following discussion of

these issues an understanding will be developed which will allow increased implementation of student helping services. It is the purpose of this paper to (1) encourage counselors to utilize peer assistance programs and to (2) discuss some of the related legal and ethical concerns as identified by a survey of 30 counselors who have recently initiated peer assistance programs.

Legal and Ethical Issues and Concerns As Identified by 30 Counselors

In an attempt to pinpoint concerns of school counselors regarding this topic, thirty Indiana school counselors were surveyed and asked to list concerns involving ethical and legal issues that confronted them when they recently established peer assistance programs. Four concerns, similar to topics covered in current related literature, were clearly identified: (1) confidentiality, (2) peer "counselors" vs. peer "helpers" or "assistants," (3) dependency, and (4) accountability.

Confidentiality

Not surprisingly, confidentiality was one of the leading issues mentioned by these school counselors. Careful selection of peer helpers, along with a good training program, will help ensure that confidentiality will be kept.

In some states (i.e., Indiana), the "school counselor is immune from disclosing privileged or confidential communication made to him as a counselor by a student." (Selbee, 1989, P.2) However, the same privilege does not apply to either peer helpers or support group participants. Students need to understand (both the helper and helpee) that while all efforts to ensure confidentiality will be attempted, the same level of protection that the student had with the school counselor can not be guaranteed. For instance, a guidance counselor cannot be compelled to testify in a legal proceeding, but the peer helper could be forced to do so.

Another interesting question raised concerning confidentiality is whether or when school personnel (and peer assistants) have a duty to disclose confidential

information to parents. Some states (i.e., Pennsylvania) have regulations within their state departments of education that allow for information given in confidence to be revealed to parents where the health, welfare, or safety of the student or other persons is in question (Fearen, 1987). This practice is consistent with ethical guidelines adhered to by people in the helping profession who feel that confidentiality must be broken in cases of (1) severe depression (i.e., suicidal possibility); (2) physical abuse, sexual abuse, or neglect; or (3) where a person's life has been threatened. However, it is less clear in circumstances which are not life threatening but in which the parent insists on knowing what their child told the peer assistants. Although school counselors are clearly protected from disclosing such information, what about the student helpers?

Sometimes school boards have developed policies regarding what information, and under what conditions, school personnel must disclose student confidences to parents beyond the situations as prescribed by law and professional ethics. Such policies may come in conflict with the professional ethics of the counselor and present the counselor with the dilemma of doing what is right ethically versus following the mandate of the employer. Student assistants may also be confronted with a similar conflict, and judgments regarding whether or not to maintain confidentiality must be made.

The question of confidentiality can also be considered from the Federal Family Educational Rights and Privacy Act (FERPA) perspective. FERPA requires that schools establish a policy that allows parents the right to review and inspect their child's educational record. If something in confidence is written and placed in the student's records, parents have access to that information upon request (up to age 18). However, counselors do not have to volunteer that information. Federal law states that if the information is not placed in the student's file but is "only in records

remaining solely in the possession of the counselor who made them, parents have no right to that information, provided the records are not accessible or revealed to anyone other than the individual who made them or his substitute." (Fearen, 1987, p. 33) Yet, what about written records of conversations maintained by peer assistants? Could these records be kept from parents who demand to know what their child told a peer assistant?

Many other issues could be addressed concerning confidentiality. However, it is hoped that this brief discussion will fuel additional questions and stimulate further discussion aimed at clarifying the issue.

Professionalism and Competency: "Peer Counselors" vs. "Peer assistants"

Another concern identified by the 30 school counselors was that peer helpers cannot be termed "counselors" in any sense of the word. Myrick (1983) stated that it is vitally important that a peer counselor understand his/her role as an empathetic listener and as a referral person to the appropriate professional. Many good training programs (i.e., Tindall & Gray, 1989) emphasize such a role for the peer helper to be a facilitator and not a problem solver or advice giver. Perhaps it would be wise to refer to students as "peer assistants," "peer helpers" or "peer facilitators" instead of "peer counselors." This may remove some of the criticism of student helpers by adults who are concerned that some students are attempting to counsel other students professionally (de Rosenroll, 1988).

Peer assistants are trained to listen empathetically and to be caring individuals for the students they are trying to help. "As such, proponents of peer counseling must guard against professionalizing peer counselors; that is, creating miniature mirror images of counseling and therapeutic professionals. Peer counselors are intended to supplement, not supplant, professional activities." (de Rosenroll, 1988, p. 6-7)

The skeptics of peer assistance programs will often be school counselors

themselves or members of the community mental health profession. They may legitimately ask, "How can a student with a few hours of listening and communication skills deal effectively with issues of serious concern? Isn't this best left to professionals, who have master's or doctorate degrees and hundreds or thousands of hours of practical experience in the field?" Communicating that your program's purpose is to be based on listening, caring, and making referrals to appropriate professionals, rather than being designed to promote problem solving for the students coming for help, will be a positive step toward dispelling the junior therapist image.

The issue of competency can be dealt with effectively through rigorous and organized training sessions for peer assistants. Allen (1973) criticized training sessions which involved a one-weekend encounter group training for peer facilitators. Proper training of peer assistants is an ethical issue related to the competency of the peer helpers (Myrick & Erney, 1978). Accordingly, there is considerable evidence suggesting that a well-organized, on-going program for training is essential if students are effectively going to help each other (Downe, Altman, & Nysetvold, 1986).

Dependency

A third issue raised by counselors completing the survey was the question of dependency. Some feared that students are taking on too much responsibility in listening to the problems of others who are hurting emotionally themselves. However, a counter-argument was that students already do this with or without the existence of a peer assistance program. Adolescents confide in each other a great deal of the time, burdening their friends with their anxieties and troubles. Well-organized peer assistance programs will have effective training and monitoring devices in place to combat the dependency question.

It becomes vitally important to stress that peer assistants are not to be problem solvers, but rather effective listeners. They provide information so the individual

seeking help can explore different options. Decision making skills can also be relayed so that the helpee may make future decisions on his/her own and not rely on others for finding solutions. The goal of peer assistants, then, is to communicate to those seeking help that each person, individually, is responsible for his or her own life and that each person needs to take control and have his/her life guided by rational, logical beliefs and behaviors.

Accountability

Finally, accountability was noted as an issue when counselors referred to the possibility of a lawsuit stemming from a peer assistant mistake. Again, appropriate training of student facilitators will teach them how and in what instances situations should be referred to the appropriate professionals. Monitoring is vital in lessening the possibility of such problems arising. However, those who undertake to coordinate such helping programs realize that there are no perfect safeguards. Risk taking, with good planning and supervision, has potential to be worthwhile because of the benefits it will provide to the students and ultimately to the school itself.

Harry Truman's statement, ("The buck stops here."), is applicable to the coordinator of the peer assistance program. As de Rosenroll (1988) stated, "the onus is on the professional help given to ensure that appropriate ethical guidelines, consistent with the professional organization, are understood and practiced. These guidelines include competencies, training, confidentiality, and supervision." (de Rosenroll, 1988, p. 8)

Supervision of a peer assistance program involves careful monitoring to ensure that ethical and professional guidelines are followed by the peer helper. A difficult dilemma will arise when one tries to balance the idea of monitoring (central authority) with the idea of the peer assistant being centrally involved in the decision making aspect of the program (Ostro, 1987). It is important for individuals who are a part of the

program to feel ownership in its creation and operation.

A monitoring process that delivers the image to the student helpers that the program coordinator is supervising in order to assist, not control, would be advantageous. Yet the adult coordinator should be quite clear that he/she is ultimately responsible for the well-being of all involved, the helper and the helpee. Included in such monitoring and supervision are clearly stated consequences for failing to abide by ethical and professional guidelines.

Conclusions

It seems that, whenever society is faced with problems, our educational systems are expected to find immediate and effective solutions. However, most schools today lack resources and are finding it extremely difficult to fulfill their basic mission--that of effectively educating our children. In addition, schools are asked to fight alcohol and drug abuse, help students deal more effectively with anxiety and depression, provide support for those who have been sexually or physically abused, instill appropriate moral values, and to develop other programs to deal with a wide variety of social ills.

It would seem logical that those schools involved in a partnership with civic groups, governmental units, and community mental health professionals have created peer assistance programs in an attempt to fight such societal problems. Not only are they economically cost efficient, but results demonstrate effective help for students.

The challenge is to create programs that address the ethical and legal issues mentioned throughout this discussion. School boards and state departments of education must provide some leadership here by establishing clear and supportive guidelines for peer assistance programs. This will be difficult because these bureaucratic units historically have been reactors, not innovators. It will take bold, caring, and creative action to be well-organized and prepared. However, our children are worth the risks!

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